**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL APPLICATION NO.4139 OF 2005**

Iqbal Kasam Pathan ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri. Santosh Deshpande for the Applicant.
Ms S. D. Shinde, A.P.P. for the Respondent.

**CORAM : A. S. OKA, J.**
**DATED : JULY 19, 2005.**

**P.C.:**

1. Heard Advocate appearing for the Applicant and the learned A.P.P. for the State. The Applicant was arrested on 25th November,2003 in connection with the crime registered at Andheri Police Station for the offences under sections 450, 452, 395, 397, 307 of the Indian Penal Code read with sections 3, 5, 25, and 27 of the Arms Act. An Application for bail filed by the Applicant has been rejected by the learned Sessions Judge.

2. The learned Advocate for the Applicant submitted that it is the case of the prosecution that the Applicant fired a shot by using a pistol as a result the complainant Jagdish Kothari suffered an injury. He submitted that there is no recovery of the pistol at the instance of the Applicant. He submitted that the reliance placed on Test Identification Parade by the prosecution will not help the prosecution. He pointed out that no role is assigned by the complainant and the two other witnesses who have allegedly identified the Applicant in the Test Identification Parade. He submitted that the said

lacuna in Identification Parade is tried to be filled in by recording further statement of the complainant in which the complainant has stated that it is the Applicant who fired the shot at him by a pistol. He submitted that the Applicant is already in custody for last more than one and half years. Considering that trial is likely to consume considerable time, the Applicant deserves to be enlarged on bail. He submitted that after his arrest, he was tortured in police custody and he has placed reliance on the record of the concerned public hospital which shows the injuries on the person of the Applicant.

3. The learned A.P.P. has filed an affidavit of the Investigating Officer in which it is set out that the Applicant is involved in eight cases and in some other cases registered at some other police stations involvement of the Appliant is being investigated into. The learned A.P.P. submitted that the complainant suffered injury as a result of the bullet fired by the Applicant and the injury has been certified by the Nanawati Hospital. The learned A.P.P. denied that the Applicant was subjected to torture in custody.

4. I have considered the rival submissions. The Applicant was arrested on 25th November, 2003 and the Test Identification Parade is conducted on 12th

December, 2003. In the Test Identification Parade all that is stated is that the complainant identified the Applicant. No specific role was ascribed by the complainant against the Applicant at the time of Test Identification Parade. It appears that the said lacuna was tried to be filled in by recording supplementary statement of the complainant. The F.I.R. was registered on 13th November, 2003 by the said Jagdish Kothari. The Investigating Officer has recorded his first supplementary statement on 22nd November, 2003 and second supplementary statement was recorded on 12th December, 2003 after the Test Identification Parade. At this stage it appears to me that there is some substance in the submission of the learned Advocate for the Applicant regarding the Test Identification Parade. Apart from delay in holding Test Identification Parade it appears to me that the complainant has merely identified the Applicant without ascribing any role to the Applicant at the time of Test Identification Parade. Subsequently a supplementary statement is recorded by the Investigating Officer in which the complainant has described the role played by the Applicant.

5. The Applicant is in custody for last more than seventeen months and till today there is no recovery at the instance of the Applicant.

6. In the affidavit in reply, reference is made in eight offences registered against the Applicant. Affidavit itself discloses that in case of atleast three offences the Applicant has been discharged and in case of other offences, trials are pending. As regards some other offences, simply a bald statement is made in the affidavit in reply without giving any particulars. It is stated by that Applicant in his Application that during period of seventeen months spent in the custody he has lost his small daughter. Considering the nature of evidence on record, it is very difficult to ensure that the trial will be completed in short span of time. All these factors make out a case for grant of bail. As in my view case is made out for grant of bail, it is not necessary to deal with the contention of the learned Advocate for the Applicant regarding the serious allegation that the Applicant was subjected to torture at the instance of the Investigating Officer when he was in custody. The said allegation can be dealt with in an appropriate proceedings.

6. Hence, I pass the following order:

: O R D E R :

i) The Applicant shall be entitled on bail in connection with C.R.No. 423 of 2003 of Andheri Police Station, subject to furnishing a personal bond of Rs.15,000/- with two local sureties in the like

amount.

ii) The Bail is granted subject to condition that the Applicant will report to Mumbra Police Station, District Thane on every Sunday at 11.00 a.m. till conclusion of the trial.

iii) The Bail is granted subject to codition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

iv) The Applicant shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

**JUDGE**